IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1796 of 1999

in

SPECIAL CIVIL APPLICATIONNo 4304 of 1999

With
CIVIL APPLICATION NO. 15241 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVIBEN SURAJMAL KHATRI
Versus
STATE OF GUJARAT

Appearance:
MR BS BRAHMBHATT for Appellant
Mrs. Manisha Lavkumar, Ld. APP for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE C.K.THAKKAR

Date of decision: 14/02/2000

ORAL JUDGEMENT

Per: C.K. Thakkr, J :-

Rule. Mrs. Manisha Lavkumar, learned Asst. Govt. Pleader waives service of rule on behalf of the respondents.

This petition is filed against the dismissal of Special Civil Application No. 4304 of 1999 by the learned Single Judge on November 22, 1999.

The appellant was the original petitioner. She obtained a licence as a Retail Kerosene Dealer on September 08, 1997. When an inspection was carried out at the check post of Amirgadh by Mamlatdar, Palanpur, certain irregularities were found. In pursuance of the said irregularities the licence of the appellant was suspended and show cause notice was issued as to why the licence should not be cancelled. The appellant had not replied to the said show cause notice. At the time of hearing, husband of the appellant remained present. The case of the appellant was that, she was not staying with her husband and that, even if there was any irregularity on the part of her husband, it cannot come in the way of the appellant, and the licence granted in her favour cannot be cancelled.

After appreciating the facts & circumstances of the case and observing that the appellant-wife had neither replied to the show cause notice nor evidence was produced regarding quarrel and or staying separately from the husband, the competent authority held the said ground as an after thought. It was also held that the irregularity was committed and hence the licence was cancelled. The said order was confirmed by the appellate authority as well as State of Gujarat in revision application. Learned Single Judge also considered all the contentions raised before him and by reasoned judgment, negatived them, and dismissed the petition.

Mr. Bhadresh Brahmbhatt, learned counsel for the appellant again reiterated the contentions raised before the appellate authority as well as before the learned Single Judge. It was contended that the copies of the statements recorded during investigation were not supplied to the appellant and thus there was violation of principles of natural justice and fair play.

Reliance in this respect was placed on a decision in Kiran Oil Industries Vs. District Collector, Jamnagar, 1996 (1) G.L.H. 614 and in Spl.C.A. No. 7703 of 1996 decided on September 08, 1997. In both the cases, the matters were remanded by the learned Single Judge of this Court, directing the authorities to afford an opportunity of hearing on the statements recorded by the authorities. It is, however, necessary to bear-in-mind that in those cases, a reply was filed, contentions were raised and the learned Single Judge held that it was incumbent upon the authorities to look into the defence raised by the petitioner with a view to come to a conclusion whether the confiscation was justified in the facts and circumstances of the case.

As observed by the authorities as well as learned Single Judge in the instant case, no reply at all was filed to the show cause notice by the appellant. The case regarding staying separately by the appellant and her husband was not believed by the authorities as well as learned Single Judge. In our opinion, therefore, it cannot be held that by dismissing the petition the learned Single Judge has committed an error of law which requires interference of this Court. We do not find any error of law committed by learned Single Judge. This LPA deserves to be dismissed and the same is accordingly dismissed.

Learned counsel for the appellant finally submitted that, even if this Court is of the view that LPA does not deserve admission, it may be observed that, if a fresh application for licence is submitted by the appellant, it may be considered by the authorities on its own merits. In our opinion, no such direction can be issued. If the appellant can make such an application, our order will not come in the way of appellant. But if cancellation of licence attaches any disqualification or ineligibility, it can not be overlooked. The appeal is accordingly dismissed. No order on civil application. No order as to cost.

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